



Rep. Dennis Bonnen, Chair
Voter Identification & Voter Fraud, Select Committee
Texas House of Representatives

Re: Senate Bill 14

Dear Chairman Bonnen:

At the invitation of Representative Patricia Harless, I would like to share with you Indiana's experiences with regard to our photo ID voting requirement.

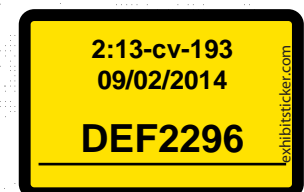
I served as Chairman of the four member bipartisan Indiana Election Commission ("IEC") for five years between July 1, 2005 and June 30, 2010. As such I shared the responsibility for overseeing campaigns, fundraising, and elections with the three other members of the IEC as well as with our Secretary of State who is by law the state's Chief Election Officer.

During elections in 2002 and 2004 it became clear that Indiana's system of voter registration and voting was broken. During this time it was determined that one of the most populated counties in the state had some 90,000 inactive voters that its election board refused to purge from the roles. Data collected by the Election Assistance Committee in 2004 indicated that nineteen of Indiana's ninety-two counties had registration totals exceeding 100% of the 2004 voting-age population. Studies of actual voter registration compared with self-reported registration rates found that there were 4.3 million registered voters in 2004, while there were only 3 million residents who reported being registered, resulting in estimated inflation of 41.4% in the registration roles. Studies noted that Indiana had the largest discrepancy in the nation between official registration numbers and self-reported rate of registration. Moreover, these studies also showed "with a high rate of confidence" that at least 35,699 Indiana registered voters were actually deceased. The research also indicated that in 2004 there were 233,519 potential duplicate voter registrations.¹

According to press reports, during the East Chicago City primary election on May 6, 2003, Jose Rudy Torres Jr. walked into the Roberto Clemente Center in East Chicago, signed his name, and cast a vote in a hotly contested Democratic primary battle for mayor. In fact he was one of four family members who voted from the same house. The problem? Jose Rudy Torres Jr. died on December 26, 1997 in a Chicago Hospital and his family moved out of East Chicago in 1998 yet they kept right on voting in each successive election. In May of 2003 East Chicago Mayor Robert Pastrick lost on Election Day by 199 votes, but won the absentee balloting by 477 votes. Curiously enough Mayor Pastrick was a funeral home owner where Mr. Torres and many of the absentee voters were prepared for burial. The Lake County Prosecutor, Bernard Carter,

¹ *Indiana Democratic Party v. Rokita*, 458 F.Supp.2d 775, 793-794 (S.D.Ind. 2006).

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owned several apartment buildings that were vacant but which were used as home addresses for fraudulent voters. Many of these individuals have now been indicted and prosecuted.²

In addressing the contest arising from this election, the Indiana Supreme Court noted that certain individuals in East Chicago engaged in “a deliberate series of actions ... making it impossible to determine the candidate who received the highest number of legal votes cast in the election.”³ Indeed, according to the uncontested factual findings of the trial court, one of the candidates paid supporters to stand near polling places and encourage voters-especially those who were poor, infirm, or spoke little English-to vote absentee. The supporters asked the voters to contact them when they received their ballots; the supporters then “assisted” the voter in filling out the ballot.^{4 5}

As a consequence of the confluence of the foregoing factors, Indiana voters lost confidence in Indiana’s electoral system. This loss of confidence was reflected in dwindling voter turnout. During the 1970’s and 1980’s voter turnout consistently ran between 75% and 80% of registered voters in presidential election years. By 1996 that number dipped to 63%. Off year or nonpresidential elections were far worse with 46% voting in 2002. This despite the fact that voter registration in Indiana was up each of these years.⁶

In addition, to the foregoing loss of confidence, Indiana faced a daunting task with complying with the election registration and voting modernization requirements embodied in statutes such as the National Voter Registration Act of 1993 (“NVRA”)(42 U.S.C. § 1973gg *et seq.*) and the Help America Vote Act (“HAVA”)(42 U.S.C. § 15483(a))

Based upon a desire to restore confidence in the electoral system, deter voter fraud, and modernize Indiana’s election laws, in 2005 the Indiana General Assembly passed Senate Enrolled Act No. 483, 2005 Ind. Acts p. 2005 known variously as “SEA 483”, “Voter ID”, or “Photo ID”.

² <http://www.freerepublic.com/focus/f-news/1253248/posts>.

³ *Pabey v. Pastrick*, 816 N.E.2d 1138, 1151 (Ind. 2004).

⁴ *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 n. 13 (2008) *citing Pabey v. Pastrick*.

⁵ In an interesting and pathetic side note to this election, when the ultimate winner of the Mayor’s race, George Pabey took office he pledged to reform the city and get rid of the shady politics best characterized by the 1999 sidewalks-for-votes scandal that led to federal convictions against three city councilman and an additional trio of Pastrick aides. However, Mayor Pabey was himself eventually arrested and convicted by a federal jury on theft and conspiracy charges stemming from the use of public funds for improvements to a home owned by Pabey in Gary, Indiana. Not to be outdone, former Mayor Pastrick and two of his former allies were ordered by a federal court to repay city taxpayers \$108 million in a federal civil RICO case brought against them by the Indiana Attorney General. Attorney General Greg Zoeller commented: “This case is historic; never before has a city government been adjudged a corrupt organization under federal racketeering laws.” <http://advanceindiana.blogspot.com/2010/09/east-chicago-mayor-george-pabey-found.html>.

⁶ In *Crawford* the United States Supreme Court noted that “public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process. As the Carter-Baker Report observed, the ‘electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.’” *Crawford*, 553 U.S. at 197.

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Indiana's Photo ID law requires that all Indiana residents present photo ID before casting a ballot in person at the polls on Election Day. The photo ID must meet four criteria to be acceptable for voting purposes. The ID must:

- Be issued by the State of Indiana or the U.S. government
- Display the voter's photo
- Display an expiration date – that is either current or expired no earlier than the date of the last General Election.
- Display the voter's name – such that it reasonably conforms with the name on the voter registration record (poll book).

Voters with limited incomes, religious objections to having their photos taken, and those who forget to bring adequate identification to the polls may cast a provisional in-person ballot - which must then be verified at the county clerk's office within ten (10) days following the election.

Indiana's voter identification law also requires that the Bureau of Motor Vehicles provide free photo identification to citizens who do not already have a qualifying government issued identification.

Presentation of a photo ID is required for (early) absentee-in-person voting, but is *not* required for absentee voting by mail. Indiana's absentee ballot law requires applicants to affirm under penalties of perjury that the information set forth in the application is true, including the applicant's reason for requesting an absentee ballot. Also, Indiana law requires that anyone assisting a voter in completing an absentee ballot application or absentee ballot sign an affidavit identifying the person providing the assistance.

At the time that Indiana was considering its election problems the bipartisan Carter-Baker Commission, which was co-chaired by President Jimmy Carter and former Secretary of State James Baker, recommended photo identification at the polls in order to defer fraud. A poll in March 2005, found that 75 percent of 1,003 Hoosiers surveyed supported requiring voters to show a government-issued photo ID. A year later, NBC News and the Wall Street Journal conducted a national survey and found that 81 percent of the voting public favored the requirement that voters produce a valid photo ID when they vote.

Before Indiana's first election was conducted under the photo ID law, its constitutionality was challenged in both state and federal courts. Efforts to delay application of the law by injunction were unsuccessful. After favorable trial court decisions supporting the law and three successful elections with the photo ID law, the law was reviewed by the Seventh Circuit Court of Appeals. On January 4th, 2007, the Seventh Circuit ruled in favor of upholding Indiana's Photo ID law. In April of 2008, after six successful elections and multiple unsuccessful legal challenges, the United States Supreme Court upheld Indiana's photo ID law.

Before the Supreme Court, Indiana argued that the voter ID law was part of a long-overdue election-security reform – necessitated in part by the reluctance of some county election officials to properly maintain voter lists. The State's brief underscored voter protections created by the law,

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provided data indicating the law had no significant negative impact on Hoosier voters, and pointed to the law as a legitimate fraud deterrent which ensures that each Hoosier receives one vote – and one vote only, and that votes not be diluted by vote fraud. The State's brief also highlighted several safeguards that create a balanced law, such as free photo identification for those who do not already possess a photo ID and the provisional balloting option.

The Indiana law also required that local election administrators inform constituents of the need to present a photo ID at the polls. Shortly after the law was enacted, the State initiated a massive campaign to inform and educate Hoosier voters. The election outreach strategy allocated over 1.25 million dollars in HAVA funds to educate Hoosiers about various features of elections, as well as to remind them to bring ID to the polls. Media buys (in English and Spanish) were made totaling over \$1.6 million in 2006, \$75,000, and \$550,000 in 2008. These included print, radio, and television ads. Photo-ID advertisements were also placed inside and on public transportation busses in all transit markets in the state – to ensure that non-drivers received the message. Election Administrators representing each of Indiana's 92 counties attended Poll Worker Training classes presented by the state. They received the statewide poll worker training curriculum including photo ID and other procedural Election Day activities, developed and distributed by the Election Division. Photo ID publications were distributed through:

- ✓ Signage at all Bureau of Motor Vehicle faculties.
- ✓ Major political parties.
- ✓ League of Women Voters.
- ✓ Department of Health – via a mailing to all nursing facilities. S
- ✓ All 107 county offices of Indiana's Family and Social Services Agency.
- ✓ Most colleges and universities through student body e-mail distribution.
- ✓ Many, many others.

Probably the key factor in Indiana weighing in favor of photo ID is the fact that statistics show that voter turnout has increased since the law was enacted.

In 2006, an off year election and the first statewide election held after photo ID was implemented, voter turnout was 50% of registered voters. This reversed a steady downward trend from prior years and represented an increase of 4% from the 2002 off year statewide election held before photo ID was enacted. This trend continued with the 2010 voter turnout increasing to 55%, representing yet another 5% increase in voters, and clearly reversing a multi-decade decline in turnout in these off-year elections.

A similar increase has been seen in Presidential election years. As noted earlier, during the 1970's and 1980's voter turnout consistently ran between 75% and 80% of registered voters in Presidential election years. By 1996 that number dipped to 63%. In 2000 it was 65% and in 2004 68%. In sharp contrast, in 2008 Indiana turnout jumped to 86%. Turnout increased by over 300,000 voters when compared to the 2004 general election. Additionally, for the first time since 1964, the Democratic Presidential candidate won Indiana's electoral votes. Over the course of 2008, there were well over 345,000 newly registered voters and over 800,000 new or updated

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registration records. While some of this is surely due to the "Obama factor" this cannot explain the reversal in voter turnout in off year elections in 2006 and 2010.

In his report, "The Effects of Photographic Identification on Voter Turnout in Indiana: A County Level Analysis" Jeffrey Milyo, professor of economics and public affairs at the University of Missouri states that "voter turnout in Indiana increased about two percentage points from 2002 to 2006; however, in counties with greater percentages of minority or poor voters, turnout increased by even more." He concludes that "[t]he only consistent and frequently significant effect of voter ID that I find is a positive effect on turnout in counties with a greater percentage of Democrat-leaning voters."⁷

Opponents of the notion that voters should identify themselves have yet to identify a single individual who has experienced a violation of his or her right to vote, or has been unable to vote due to Indiana's photo ID law. Indiana's experiences in 2006, 2008 and 2010 have demonstrated that our photo ID requirement does not act as a deterrent to participation. In fact a strong argument can be made that it actually increases voter turnout.

Thank you again for the opportunity to provide input into this important election integrity initiative, and I would be happy to answer any questions you may have.

Sincerely,

Thomas E. Wheeler, II
Former Chair, Indiana Election Commission

⁷ Professor Milyo evaluated the effects of photo identification requirements by comparing county-level turnout in Indiana in the 2002 and 2006 mid-term elections.

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